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Supreme Court of the United States

OCTOBER TERM, 1994

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, KENNETH T. LYONS, ROBERT FRIEHL, GRACE MUCCI, JOHN DONEGAN, PATRICIA BARBARO, KENNETH HOWE, JAMES FARLEY, KENNETH H. KNIGHT, AND DREW REARDON,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE, COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS, GROUP INSURANCE COMMISSION, BOARD OF REGENTS OF HIGHER EDUCATION, HIGHER EDUCATION COORDINATING COUNCIL,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Commonwealth of Massachusetts violated the Contract Clause by passing legislation abrogating provisions in a collective bargaining agreement with state employees that established the respective amounts of state and employee contributions for health insurance premiums.

2. Whether a law providing that levels of state expenditures must be set forth in appropriations legislation constitutes a reservation of authority to change the terms of negotiated contracts with state employees.

LIST OF PARTIES

The parties to this proceeding are listed in the caption. Petitioner National Association of Government Employees, Inc. (NAGE) is a Delaware nonprofit corporation. NAGE is affiliated with the Service Employees International Union, AFL-CIO.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

No. _____

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, KENNETH T. LYONS, ROBERT FRIEHL, GRACE MUCCI, JOHN DONEGAN, PATRICIA BARBARO, KENNETH HOWE, JAMES FARLEY, KENNETH H. KNIGHT, and DREW REARDON,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE, COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS, GROUP INSURANCE COMMISSION, BOARD OF REGENTS OF HIGHER EDUCATION, HIGHER EDUCATION COORDINATING COUNCIL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

The petitioners, the National Association of Government Employees, Kenneth T. Lyons, Robert Friehl, Grace Mucci, John Donegan, Patricia Barbaro, Kenneth Howe, James Farley, Kenneth H. Knight, and Drew Reardon, respectfully pray that this Court issue a writ of certiorari to review the judgment of the Supreme Judicial Court of Massachusetts, entered in this action on February 9, 1995.

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts is reported at 419 Mass. 448, 646 N.E.2d 106, and is reproduced in the Appendix to this Petition at A-1 - A-9. The earlier opinion of the Superior Court of Massachusetts, dated April 12, 1994, is unreported. It is reproduced in the Appendix at A-10 - A-21.

JURISDICTION

The judgment and opinion of the Supreme Judicial Court of Massachusetts were issued on February 9, 1995. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Contract Clause, United States Constitution, Article I, § 10, provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."

Mass. St. 1993, ch. 110, § 2, line item 1108-5200, provides in pertinent part:

> [T]he commonwealth's share of the group insurance premium for active and retired state

> employees as provided in [§ 8] of said [c. 32A] and for the purposes of [§ 14] of said [c. 32A] shall be ninety percent . . provided further, that after [July 31, 1993], the commonwealth's share of such premium for active state employees shall be eighty-five percent.

Mass. Gen. L. ch. 32A, § 8 (1992 ed.) provides in pertinent part:

> [T]he commonwealth, on behalf of active and retired employees and their dependents, shall contribute no less than seventy-five per cent of the total monthly premium or rate applicable to said coverages and the active and retired employees on behalf of themselves or themselves and their dependents shall contribute the remaining twenty-five per cent of the total monthly premium or rate, except, that upon approval by way of an annual, or more frequent appropriation act, the commonwealth may contribute more than seventy-five per cent but less than the entire total monthly premium or rate. Each appropriation act as may be applicable, shall provide the necessary sum based upon the estimated monthly cost as required by section four and shall describe the ratio of contribution to be paid by the commonwealth and by the active and retired employees insured under the aforesaid sections. . . . The aforesaid ratio shall continue until changed by a subsequent appropriation act . . . .

STATEMENT OF THE CASE

This case poses the question whether the Contract Clause permits a state, for budgetary reasons, to pass a law abrogating provisions of collective bargaining agreements — that is, contracts — the state has entered into with its employees. The petitioners, a public employee union and certain of its officials and members, challenge Massachusetts legislation that cuts the level of health insurance contributions that the state is obligated to pay for its employees under concededly valid collective bargaining agreements. The Supreme Judicial Court of Massachusetts has affirmed the validity of the state's abrogation of the contracts in an opinion that conflicts with the interpretation of the Contract Clause by other federal and state appellate courts.

A. Background Facts

Petitioner National Association of Government Employees (NAGE) is a union representing employees of the Commonwealth of Massachusetts. In 1990, NAGE entered into three three-year collective bargaining agreements with Massachusetts covering employees of various units of the government of Massachusetts. Each collective bargaining agreement provided that the state would contribute ninety percent of the health insurance premiums of the covered employees, with the employees contributing the remainder. These provisions conformed with Massachusetts law, which provides that the state must pay at least seventy-five percent of its employees' health insurance, and may pay up to ninety-nine percent. The level of health insurance premium contributions is a mandatory subject of collective bargaining between the state and the representatives of its employees.

The three collective bargaining agreements became effective under their own terms (and under Massachusetts

law) when they were ratified by legislation appropriating funds for the first year of their three-year terms. The initial three-year terms of the agreements expired on June 30, 1993; but, by virtue of provisions in the agreements stating that they would "remain in full force and effect until a successor agreement is executed," each of the agreements is still in effect.

In 1993, the Massachusetts legislature sought to abrogate the contracts' provisions regarding health insurance contributions by including in legislation establishing Massachusetts' budget for 1994 a "line item" altering the state's health insurance contribution. This new legislation provided that the state would henceforth contribute only eighty-five percent of its employees' health insurance premiums, and would require the employees to contribute the remaining fifteen percent. The state began to implement the legislation in September 1993, by deducting from employees' paychecks an amount equal to fifteen percent of their monthly health insurance premiums.

B. Proceedings Below

NAGE and several of its officers and members filed this action in the Superior Court of Massachusetts for Suffolk County in late 1993, claiming, *inter alia*, that the legislation altering the health insurance contribution levels violated the Contract Clause of the United States Constitution. The Superior Court, deciding the case on stipulated facts, found that the legislation substantially impaired the employees' collective bargaining agreement with the state, and that the asserted rationale for this impairment — which amounted to no more than the state's desire to reduce its expenditures — was not a sufficient justification for the impairment under this Court's decisions in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983), and

United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977).

The Supreme Judicial Court of Massachusetts granted the Commonwealth's application for direct appellate review, and reversed. The court recognized that the collective bargaining agreements had been duly ratified by the state and were still in effect. Nonetheless, the court held that the legislation abrogating the contracts' provisions regarding health insurance contributions did not impair rights under the contracts, because preexisting state law reserved to the legislature the power to "change the percentage of the Commonwealth's agreed-to contributions." A-6.

The court found this supposed reserved power in legislation providing that the level of state health plan contributions was subject to "approval by way of an annual, or more frequent appropriation act," and that "[e]ach appropriation act as may be applicable . . . shall describe the ratio of contribution to be paid by the commonwealth and by the . . . employee." A-4 (quoting Mass. Gen. L. ch. 32A, § 8 (1992 ed.)). Despite having held in prior cases that state laws making all expenditures contingent on appropriations did *not* provide reserved authority for the legislature to use subsequent appropriation acts to cut back payments required by collective bargaining agreements, *see Boston Teachers Union, Local 66 v. School Comm. of Boston*, 386 Mass. 197, 207-09, 434 N.E.2d 1258, 1264-65 (1982), the court held in this case that the legislation providing that contribution rates would be specified in appropriation acts constituted an "implied term" in the collective bargaining agreements authorizing the legislature to alter the contribution rates at any time. Indeed, the court went so far as to assert that "the agreements themselves necessarily contemplated changes in premium contributions through subsequent appropriation acts." A-9. Thus, the court concluded, the exercise of

"reserved power" in accordance with this "implied term" did not impair the contracts. A-7 - A-9.

REASONS FOR ALLOWANCE OF THE WRIT

In a time when state and local governments increasingly face pressures to cut their budgets, the wages and benefits of government employees are tempting targets for legislative rollbacks. The resolution of collisions between such attempted cutbacks and the terms of collective bargaining agreements protecting state employees is a matter of fundamental importance to the integrity of the collective bargaining systems that many states have erected to manage their own labor relations. Because collective bargaining agreements are contracts between the states and their employees, the Contract Clause of the United States Constitution is directly implicated in any effort by a state to solve its budgetary problems through evasion or outright breach of its obligations under a collective bargaining agreement. In permitting Massachusetts' legislature to abrogate the terms of valid contracts between the state and its employees, the Supreme Judicial Court of Massachusetts has distorted Contract Clause principles established in the decisions of this Court, and in so doing resolved important questions of federal law in a manner contrary to the weight of authority from other state courts of last resort and federal courts of appeals. A grant of certiorari is warranted to address these questions, and to settle the issue of the application of the Contract Clause to collective bargaining agreements of states and local governments.

I.
THE RESULT BELOW IS CONTRARY TO DECISIONS OF FEDERAL AND STATE APPELLATE COURTS RECOGNIZING THAT A STATE'S ABROGATION OF A COLLECTIVE BARGAINING AGREEMENT WITH ITS EMPLOYEES IS A "SUBSTANTIAL IMPAIRMENT" OF CONTRACT

It is well established that analysis under the Contract Clause begins with the question whether a state has "substantially impaired" rights or obligations under a contract, and, if such impairment is found, proceeds to an examination of the justification for that impairment. *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). Where a state has impaired a contract to which it is a party (such as the collective bargaining agreements here), the level of justification demanded is heightened, for "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 26 (1977). This Court has cautioned in particular against acceptance of budgetary considerations as a justification for a state's impairment of a contract:

> A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.
>
> . . .

> [T]he Court has not "balanced away" the limitation on state action imposed by the Contract Clause. Thus a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors.

Id. at 26, 29.

Notwithstanding this Court's admonitions in *United States Trust*, states have frequently sought to economize by reducing their contract-based financial obligations to employees through such measures as hold-backs of wages, delays of agreed-to wage increases, furloughs, or reductions of agreed-upon benefit levels. Contrary to the ruling of the Massachusetts Supreme Judicial Court in this case, state supreme courts and federal appellate courts have regularly recognized that cutbacks that have the effect of reducing financial benefits to state employees under collective bargaining agreements or other contracts constitute "substantial impairment[s]" of the obligation of contracts within the meaning of this Court's Contract Clause analysis. *See Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1015-18 (4th Cir. 1993), *cert. denied*, 114 S. Ct. 1127 (1994); *Condell v. Bress*, 983 F.2d 415, 418-19 (2d Cir.), *cert. denied*, 113 S. Ct. 1849 (1993); *Association of Surrogates v. New York*, 940 F.2d 766, 772 (2d Cir. 1991), *cert. denied*, 502 U.S. 1058 (1992); *Nevada Employees Ass'n v. Keating*, 903 F.2d 1223, 1227 (9th Cir.), *cert. denied*, 498 U.S. 999 (1990); *Association of Surrogates v. New York*, 79 N.Y.2d 39, 46-47, 588 N.E.2d 51, 54 (1992); *Opinion of the Justices (Furlough)*, 135 N.H. 625, 631-34, 609 A.2d 1204, 1208-10 (1992); *Carlstrom v. State*, 103 Wash. 2d 391, 395, 694 P.2d 1, 4 (1985); *Sonoma*

County Org. of Public Employees v. County of Sonoma, 23 Cal. 3d 296, 308-09, 591 P.2d 1, 7 (1979).

As the Fourth Circuit put it in *Baltimore Teachers, supra*:

> [W]e are confident that, *at the very least*, where the contract right or obligation impaired was one that induced the parties to enter into the contract and upon the continued existence of which they have especially relied, the impairment must be considered "substantial" for purposes of the Contract Clause.
>
> In the employment context, there likely is no right both more central to the contract's inducement and on the existence of which the parties more especially rely, than the right to compensation at the contractually specified level.

6 F.3d at 1018.

Under the analysis of *Baltimore Teachers* and the other cited state and federal court decisions employing the same analysis, a five percent reduction in the contractually specified rate of state contributions for employee health benefits — coupled with the concomitant five percent increase in employees' contributions deducted directly from their paychecks — unquestionably would constitute a "substantial impairment" of contract.

Indeed, the Supreme Judicial Court of Massachusetts has recently given explicit recognition to this very principle. In *Massachusetts Community College Council v. Commonwealth of Massachusetts*, 420 Mass. 126, ___

N.E.2d ___ (1995), that court held that legislatively mandated furloughs of state employees, which resulted either in the loss or deferral of wages and salaries provided for under collective bargaining agreements, constituted substantial impairments of the agreements. The court based this holding on the proposition that "a unilateral reduction in contractually established, future State employee salary obligations constitutes a substantial impairment for Contract Clause purposes." *Id.*, slip op. at 8. By this same reasoning, the reduction in employee take-home pay effected by the Massachusetts legislature in reducing the health insurance contributions called for by the collective bargaining agreements clearly would also constitute a "substantial impairment."

II.
THE SUPREME JUDICIAL COURT'S RELIANCE ON "RESERVED POWER" IS ERRONEOUS AND IN CONFLICT WITH DECISIONS OF THIS COURT AND OTHER FEDERAL AND STATE APPELLATE COURTS

Given the Massachusetts court's own recognition that impairments of the type worked by the legislation at issue here are "substantial" within the meaning of this Court's Contract Clause jurisprudence, it is evident that the result below rests critically on the Supreme Judicial Court's manipulation of the concept of "reserved power" to thwart the terms of the contract. But the Massachusetts court's resort to the doctrine of "reserved power" to avoid the conclusion that the contracts were impaired is contrary to both the principles of this Court's Contract Clause precedents and the specific holdings of other federal and state appellate courts.

As this Court explained in *United States Trust Co., supra*, "[w]hen a State impairs the obligation of its own contract, the reserved-powers doctrine has a different basis" than in cases involving private contracts. 431 U.S. at 23. While a state may not be bound to a contract that "surrenders an essential attribute of its sovereignty," *id.*, holding it to a financial commitment does not run afoul of the "reserved power" of the legislature with respect to appropriations:

> Whatever the propriety of a State's binding itself to a future course of conduct in other contexts, the power to enter into effective financial contracts cannot be questioned. Any financial obligation could be regarded in theory as a relinquishment of the State's spending power, since money spent to repay debts is not available for other purposes. Similarly, the taxing power may have to be exercised if debts are to be repaid. Notwithstanding these effects, the Court has regularly held that the States are bound by their debt contracts.

Id. at 24.

Here, the Massachusetts Supreme Judicial Court has in effect attempted to renege on a contract using the very reasoning that this Court rejected in *United States Trust* — that is, the notion that the contract is subject to the legislature's "reserved power" to appropriate a level of expenditures different from those set forth in the contract. The basis for this holding is a statute that simply states a truism: that funds for health insurance contributions must be appropriated. Thus, the court has transformed a formal requirement under state law that the amount of a particular expenditure be set forth in an appropriation act into an

"implied term" granting the state the power to alter the terms of concededly valid contracts at will. [1] In so doing, the court has used a fiction to negate the contract rights at issue. [2]

Precisely such reasoning was rejected by the Fourth Circuit in *Baltimore Teachers, supra*. There, the City of Baltimore contended that it had a reserved power to reduce the employee salary levels specified in collective bargaining agreements under a City Charter agreement granting the Board of Estimates the power to effect "reductions . . . in appropriations." 6 F.3d at 1016. Rejecting the City's argument, the Fourth Circuit stated that "[g]iven the value ascribed to contracts in our society, and the Constitution's explicit proscription on the state's impairment of contracts, we would not hold, absent the clearest evidence, that the City intended to confer upon the Board of Estimates even the power unilaterally to modify the City's contracts." *Id.*

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[1] Whether this supposed "reserved power" is an "implied term" of the contracts for purposes of the Contract Clause is a question of federal law, not state law. *General Motors Corp. v. Romein, supra*, 503 U.S. at 187. As this Court explained in *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938), "in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation."

[2] Such a use of the concept of "reserved power" is directly contrary to previous decisions of the Supreme Judicial Court, which make clear that the concept of reserved power is "not unlimited," and "cannot be exercised arbitrarily or so as to violate fundamental principles of justice; but it is not exceeded so long as the object of the charter is not defeated or essentially impaired and property and rights acquired upon the faith of the charter are not taken away." *Opinion of the Justices*, 251 Mass. 569, 612, 147 N.E. 681, 700 (1925). Here, the Supreme Judicial Court has fashioned a new reserved power that both impairs the object of the contract and takes away rights acquired under that contract.

Noting that a general grant of the power to set the level of appropriations "does not necessarily subsume the power to modify contracts," *id.*, the Court declined to read such a general grant of authority as evidencing a reserved power to alter the terms of contracts.

Similarly, in *Carlstrom v. State, supra*, the Washington Supreme Court rejected the claim that a statute providing that collective bargaining agreements "will not be binding upon future actions of the legislature" constituted a reservation of the state's right to cancel wage increases otherwise called for by an agreement. 103 Wash. 2d at 398, 694 P.2d at 6. Observing that the legislature "knows how to use plain English to make existing contracts subject to future modification," *id.*, the court held that the statute did not reserve to the legislature the power to abrogate contractual provisions.

Both *Baltimore Teacher's* and *Carlstrom* represent straightforward applications of this Court's holding in *City of Owensboro v. Cumberland Tel. & Tel. Co.*, 230 U.S. 58, 74 (1913):

> That the right may be reserved to destroy a contract may be conceded; but when such a right is claimed, it must be clear and explicit.

Under the analysis of *Baltimore Teachers* and *Carlstrom*, the result in this case would plainly be different. The statute on which the Supreme Judicial Court relied for its creation of an "implied term" in the contracts allowing subsequent legislative revision does not clearly state that the legislature may use appropriation acts to abrogate existing contracts.

Indeed, the Supreme Judicial Court itself had previously recognized that statutes providing that

expenditures may be made only pursuant to annual appropriation acts do not provide a source of reserved authority to alter previously agreed-to contract terms in each succeeding year of the contract, and had characterized as "absurd" the contrary argument. *Boston Teachers Union, supra*, 386 Mass. at 209, 434 N.E.2d at 1265. Far from carrying with it an implied, reserved power to alter contract terms, the requirement that amounts of expenditures be set forth in appropriation acts simply means that "the approval of a collective bargaining agreement by a legislative body would constitute an agreement by the legislative body to appropriate in each year the entire amount necessary to fund the contract for that year." *Id.* at 209, n.17, 434 N.E.2d at 1266, n.17. [3]

Thus, in straining to avoid a finding of contract impairment in this case, the Supreme Judicial Court has resorted to a concept of "reserved power" that has no foundation in the terms of the statutes on which the court relied, that is contrary to the holdings of other federal and state appellate courts, and that runs counter to the principles set forth in this Court's decision in *United States Trust Co.* The resolution of the conflict between the result below and

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[3] In this case, the Supreme Judicial Court sought to distinguish its prior holding in *Boston Teachers*, asserting that the statute at issue in that case was one that was expressly subordinated to collective bargaining agreements under Massachusetts law — unlike the statute regarding health insurance contribution levels, which is not explicitly subordinated to collective bargaining agreements. But while one of the statutes at issue in *Boston Teachers* was within the list of those that Massachusetts law subordinates to collective bargaining agreements, the statute providing that expenditures could not exceed appropriations was *not*. *See* Mass. Gen. L. ch. 150E, § 7(d); *Boston Teachers, supra*, 386 Mass. at 209, 434 N.E.2d at 1265. Nonetheless, the court in *Boston Teachers* held that that statute did not provide authority for revision of collective bargaining agreements through appropriations legislation.

the decisions of the Fourth Circuit, the Washington Supreme Court, and the principles of this Court's decisions warrants a grant of certiorari.

III.
THE RESULT BELOW CONFLICTS WITH THE HOLDINGS OF FEDERAL AND STATE COURTS THAT IMPAIRMENT OF COLLECTIVE BARGAINING AGREEMENTS WITH PUBLIC EMPLOYEES CANNOT BE JUSTIFIED BY CONCERNS FOR BUDGETARY ECONOMY

The result in the court below also runs counter to the recognition by the majority of state and federal courts to address the issue that a state's general interest in economy and the purported need for fiscal austerity measures cannot, under the principles of *United States Trust Co., supra*, justify a substantial impairment of the financial benefits provided for in contracts with the state's employees. As the Second Circuit held in *Association of Surrogates, supra*, a cut in contractually mandated public-employee wages or benefits as a cost-saving measure "smacks of the political expediency that *United States Trust Co.* warned of." 940 F.2d at 773. The availability of alternatives such as the raising of additional revenues or cuts in other budget items negates any suggestion that the abrogation of public employee contracts is a "reasonable" or "necessary" economy measure, and, accordingly, "[t]he contract clause bars such expedient *post hoc* changes in contractual obligations, for 'a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives.'" *Id.* (quoting *United States Trust Co., supra*, 431 U.S. at 30-31). *Accord*, *Condell v. Bress*, 983 F.2d 415, 419-20 (2d Cir.), *cert. denied*, 113 S. Ct. 1849 (1993); *Nevada Employees Ass'n v. Keating*, 903 F.2d 1223, 1226-28 (9th Cir.), *cert.*

denied, 498 U.S. 999 (1990); *Association of Surrogates v. New York*, 79 N.Y.2d 39, 46, 588 N.E.2d 51, 54 (1992); *Opinion of the Justices (Furlough)*, 135 N.H. 625, 636, 609 A.2d 1204, 1211 (1992); *Carlstrom v. State*, 103 Wash. 2d 391, 396-97, 694 P.2d 1, 5-6 (1985); *Sonoma County Org. of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 313-14, 591 P.2d 1, 10-11 (1979).

The Supreme Judicial Court itself has similarly recognized that budgetary difficulties that are foreseeable at the time a collective bargaining agreement with state employees is ratified by the legislature cannot later be used by the legislature as a justification for impairing the agreement. In *Massachusetts Community College Council v. Commonwealth of Massachusetts*, 420 Mass. 126, ___ N.E.2d ___ (1995), the court held that a "budget crisis" can be a reasonable basis for impairing a collective bargaining agreement only if there is a "difference in kind" (as opposed to merely "one of degree") between the state's financial problems at the time of the impairment and the financial problems that were foreseeable at the time the contract was entered into. Even then, the court held, the impairment may be upheld as "necessary" only if alternatives are not available. Moreover, the court rejected the notion that in assessing the reasonableness and necessity of an impairment, substantial deference should be paid to the legislature's judgment. [4]

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[4] In so holding, the Massachusetts court in the *Community College Council* case expressly took issue with the Fourth Circuit's holding in *Baltimore Teachers, supra*, that deference to a local government's asserted need to cut expenses was appropriate, and that the possibility that other measures could have achieved the same end did not render the impairment of contractual obligations "unreasonable" or "unnecessary." *See* 6 F.3d at 1019-22. Even under the Fourth Circuit's approach, however, the mere generalized desire to cut spending asserted in this case would not suffice, for the Fourth Circuit based its conclusion that the impairment at issue in *Baltimore Teachers* was reasonable on a detailed

Under the reasoning of the Supreme Judicial Court in the *Community College Council* case, as well as the other decisions cited above, the state's asserted rationale in this case for abrogating the contractual provisions regarding health insurance contributions — that is, its generalized interest in budgetary economy — plainly would not suffice to justify its impairment of these contracts. Thus, if there was a substantial impairment in this case, it is clear that that impairment would constitute a violation of the Contract Clause.

IV.
THE ISSUES ARE IMPORTANT

The Contract Clause issues presented by this case obviously have an importance far beyond the immediate concerns of the parties. In a period when state and local governments are increasingly subject to political pressure to economize, public employees frequently find their wages, benefits, and, indeed, their very jobs threatened by legislative rollbacks. How to resolve the conflict between the legislative response to perceived needs for budget cuts and the integrity and stability of the collective bargaining protections achieved by public employees is obviously an issue of great public import. The frequency with which such issues arise is attested to by the number of Contract Clause cases cited above that have made their way to federal appellate courts and state supreme courts in the last fifteen years.

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analysis of the fiscal crisis that the contract rollbacks addressed. No such facts are present in the record of this case. In any event, the conflict between the Fourth Circuit's approach in *Baltimore Teachers* and that of the majority of courts to address these issues (*see id.* at 1027 (Murnaghan, J., dissenting from denial of rehearing en banc)) simply underscores the need of the lower courts for guidance on the issue of the application of the Contract Clause to the abrogation of collective bargaining agreements with government employees.

This case illustrates the need for guidance by this Court in this important area. Here, the Massachusetts Supreme Judicial Court has chosen to bow to the state's legislature and has released the state from its contractual commitment to its employees. In so doing, the court has permitted an impairment of contract that would plainly not have been upheld under the United States Constitution by other state supreme courts and federal courts of appeals. This Court should grant certiorari to resolve the important issues posed by the Supreme Judicial Court's action.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

SJC-06650

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES & others [1]

vs. COMMONWEALTH & others. [2]

Middlesex. November 10, 1994. - February 9, 1995.

Present: Liacos, C.J., Wilkins, Abrams, Nolan, & Greaney, JJ.

ABRAMS, J. Pursuant to the relevant sections of G. L. c. 32A (1992 el.), the Commonwealth entered three three-year [3] collective bargaining agreements with the National Association of Government Employees (NAGE), which established that the Commonwealth would contribute ninety percent of employees' health insurance premiums, and that

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[1] Drew Reardon, Kenneth H. Knight, James Farley, Kenneth Howe, Patricia Barbaro, John Donegan, Grace Mucci, Robert Friel, and Kenneth T. Lyons.

[2] Secretary of the Executive Office of Administration, Comptroller of the Commonwealth, Group Insurance Commission, Board of Regents of Higher Education, and Higher Education Coordinating Council.

[3] General Laws c. 150E, § 7 (a) (1992 ed.), provides that: "Any collective bargaining agreement . . . shall not exceed a term of three years. . . ."

the employees would contribute the balance. [4] The plaintiffs, NAGE, several of its officials and two State employees, brought suit in Superior Court seeking a declaratory judgment invalidating, as applied to certain NAGE members, a line item in the fiscal year 1994 General Appropriation Act, [5] which reduced the percentage contribution by the Commonwealth from ninety to eighty-five per cent, and thus increased the percentage contributions of the employees from ten to fifteen per cent. [6] St. 1993, c. 110, § 2, line item 1108-5200. The plaintiffs claim that the item's increase in State employees' insurance premium contributions impaired the covered employees' rights under the collective bargaining agreements and therefore violated the contract clause of the United States Constitution.

After a hearing, the Superior Court judge issued a memorandum of decision and order of judgment on April 12, 1994. The judge declared that "the provision in the Commonwealth's 1994 fiscal year budget increasing the

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[4] Article 13 of each agreement provides: "The Commonwealth shall pay ninety (90) percent of the monthly premium rate for the Group Health Insurance Plan and each employee covered shall pay ten (10) percent of this premium rate for the type of coverage that is provided for him/her and his/her dependents under the Plan."

[5] The line item provides, in relevant part: "[T]he commonwealth's share of the group insurance premium for active and retired state employees as provided in [§ 8] of said [c. 32A] and for the purposes of [§ 14] of said [c. 32A] shall be ninety percent . . . provided further, that after [July 31, 1993], the commonwealth's share of such premium for active state employees shall be eighty-five percent." St. 1993, c. 110, § 2, line item 1108-5200.

[6] The Commonwealth's contribution for retired State employees remained at ninety per cent and is not at issue here.

health insurance premiums from ten per cent to fifteen percent for those employees covered by the three NAGE/Commonwealth collective bargaining agreements is unconstitutional as an impairment of the obligation of contract, and therefore null and void." The judge entered a declaration to that effect. The Commonwealth appealed. We granted the Commonwealth's application for direct appellate review. We declare that the line item which reduced the Commonwealth's contribution to eighty-five per cent does not conflict with the collective bargaining agreements and therefore does not violate the contract clause.

I. Contract clause. The contract clause provides that "[n]o state shall . . . pass any . . . law impairing the obligation of contracts . . . ." For a violation of the contract clause, there must be a "change in law [that] impairs [a] contractual relationship" and that impairment must be substantial. General Motors Corp. v. Romein, 112 S. Ct. 1105, 1109 (1992) (contract clause "inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial"). See Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983), quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978) ("threshold inquiry is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship'"). We turn to the agreements and the relevant statutory provisions.

II. The contracts. The parties do not dispute that the agreements are still in effect. Although each of the agreement's three-year periods lapsed in 1993, under open-

ended duration clauses, [7] the agreements are extended until the execution of successor agreements. No successor agreements have been executed.

Although the Commonwealth's contribution to State employees' health insurance premiums is a mandatory subject of collective bargaining, see G. L. c. 150E, § 6 (1992 ed.); Anderson v. Selectmen of Wrentham, 406 Mass. 508, 511 (1990), under G. L. c. 32A, § 8 (1992 ed.), the Commonwealth's contribution must be no less than seventy-five percent of the premiums for group health insurance, and the Commonwealth may pay a percentage greater than the statutory minimum, "upon approval by way of an annual, or more frequent appropriation act." [8] Section 8 further provides that "[e]ach appropriation act as may be applicable . . . shall describe the ratio of contribution to be paid by the commonwealth and by the . . . employees." Id. In other words, the ratio agreed to in collective bargaining is not effective unless it is incorporated by the Legislature in an appropriation act. Once effective, the Commonwealth's percentage contribution "shall continue until changed by a

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[7] Each agreement contains a clause which states: "This agreement shall be for the three year period from July 1, 1990, to June 30, 1993 . . . . Should a successor Agreement not be executed by July 1, 1993, this Agreement shall remain in full force and effect until a successor agreement is executed. . . ."

[8] General Laws c. 32A, § 14 (1992 ed.), requires the Commonwealth to make the same percentage contribution for employees covered by health care organizations, commonly known as HMOs, as for those covered by group health insurance.

subsequent appropriation act." Id. [9] The percentage contributions of the Commonwealth and its employees have varied over the years, as directed by periodic appropriation acts. [10] The agreements at issue set the Commonwealth's percentage contribution within the bounds of the relevant statutory provisions. The essence of the plaintiffs' claim is that the Commonwealth bound itself to a statutorily permissible ninety per cent contribution under the three collective bargaining agreements at issue, and that under the contract clause this agreement could not constitutionally be

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[9] Section 8 provides in relevant part: "[T]he commonwealth, on behalf of active and retired employees and their dependents, shall contribute no less than seventy-five per cent of the total monthly premium or rate applicable to said coverages and the active and retired employees on behalf of themselves or themselves and their dependents shall contribute the remaining twenty-five per cent of the total monthly premium or rate, except, that upon approval by way of annual, or more frequent appropriation act, the commonwealth may contribute more than seventy-five per cent but less than the entire total monthly premium or rate. Each appropriation act as may be applicable, shall provide the necessary sum based upon the estimated monthly cost as required by [§ 4] and shall describe the ratio of contribution to be paid by the commonwealth and by the active and retired employees insured under the aforesaid sections. . . . The aforesaid ratio shall continue until changed by a subsequent appropriation act." G. L. c. 32A, § 8 (1992 ed.).

[10] In their statement of agreed facts, the parties have stipulated that in the mid-1970's the Commonwealth contributed the statutory minimum of seventy-five per cent. In June, 1977, the Legislature increased the Commonwealth's share to eighty percent retroactively to January 1, 1977, but only for the six-month period ending on June 30, 1977. One year later, the Legislature increased the Commonwealth's share to eighty per cent retroactive to July 1, 1977; to eighty-five per cent retroactive to January 1, 1978; and to ninety per cent effective January 1, 1979. Subsequent appropriation acts maintained the Commonwealth's ninety per cent contribution ratio until fiscal year 1994, the year at issue.

altered by the Legislature. Reading the contracts in the context of their statutory constraints, we do not agree.

III. Alleged impairment of rights under the contracts. Collective bargaining agreements of the sort at issue are mandated and governed by G. L. c. 150E (1992 ed.). General Laws c. 150E, § 7 (d), lists those statutes that are subordinated to collective bargaining agreements. General Laws c. 32A, 8, is not among them. "[S]tatutes not specifically enumerated in § 7 (d) will prevail over contrary terms in collective bargaining agreements." Commonwealth v. Labor Relations Comm'n, 404 Mass. 124, 126 (1989). Accord Burlington v. Labor Relations Comm'n, 390 Mass. 157, 163 (1983).

Under the provision in § 8 which provides that the Commonwealth's contribution shall be effected by an appropriation act, see supra, the Legislature reserved for itself the power to change the percentage of the Commonwealth's agreed-to contributions. This reserved power of the Legislature cannot be overridden by collective bargaining. See Cambridge v. Attorney Gen., 410 Mass. 165, 173 (1991) ("[m]unicipal employers and employees may not negotiate to avoid complying with laws of general applicability . . ."); Anderson, supra at 511, 513-514; School Comm. of Medford v. Labor Relations Comm'n, 380 Mass. 932 (1980). See also Energy Reserves Group, Inc., supra at 411, quoting Hudson Water Co. v. McCarter, 209 U.S. 349, 357 (1908) ("One whose rights . . . are subject to state restriction, cannot remove them from the power of the State by making a contract about them"). The collective bargaining agreements at issue were executed subject not only to the percentage limitations of § 8, but also to the reserved power of the Legislature to reduce the percentage of

the Commonwealth's contribution in appropriation acts. [11] See McCarthy v. Sheriff of Suffolk County, 366 Mass. 779, 784 n.9 (1975) (contractual rights in pension benefits made subject to reserved power of Legislature to alter terms of office).

The power reserved for the Legislature under § 8 to alter the ratio became an implied term that was incorporated into the contracts. "As a general rule, the law existing at the time an agreement is made necessarily enters into and becomes part of the agreement." Feakes v. Bozyczko, 373 Mass. 633, 636 (1977). Accord Mayor of Salem v. Warner Amex Cable Communications Inc., 392 Mass 663, 666 (1984). See also General Motors Corp. v. Romein, 112 S. Ct. 1105, 1111 (1992) ("state laws are implied into private contracts . . . when those laws effect the validity, construction, and enforcement of contracts"); United States Trust Co. v. New Jersey, 431 U.S. 1, 19-20 n.17 (1977), quoting Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 429-430 (1934) ("the laws which subsist at the time and place of the making of a contract . . . enter into and form

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[11] Our decision in Boston Teachers Union, Local 66 v. School Comm. of Boston, 386 Mass. 197 (1982), cited by both the Superior Court judge and the plaintiffs, is not applicable. In that case we said that, "an appropriation funding the first year of [a] contract constitutes an approval by the legislative body of the entire agreement." Id. at 204 (three-year municipal collective bargaining agreement). The issue before us is whether a contractual obligation existed for the Commonwealth to pay ninety per cent of the employees' health insurance premiums regardless of subsequent appropriation acts, and not whether the agreements were enforceable in their later years. Further, even if the Boston Teachers Union case were relevant, it is distinguishable because it addressed a statute listed in G. L. c. 150E as subordinated to collective bargaining agreements, id. at 205, and that statute did not expressly reserve the right to alter the amount of contributions, id. at 203-204.

part of it, as if they were expressly referred to or incorporated in its terms"). In negotiating the collective bargaining agreements the parties did not have the power to bind the Commonwealth to a contribution ratio which could not be altered by the Legislature. The reserved power supersedes the agreements' reference to the then-existing ninety per cent contribution ratio. [12]

IV. Conclusion. The challenged line item was a valid exercise by the Legislature of its reserved power. General

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[12] The Superior Court judge agreed that § 8 prevails over the collective bargaining agreements, but found that it "is merely a description of the appropriation process, not an essential condition of the contract." We disagree. The statute is not merely descriptive; it orders how the contribution is to be set and changed. "When a statute is clear and unambiguous, the plain meaning of the language must be given effect." Construction Indus. of Mass. v. Commissioner of Labor & Indus., 406 Mass. 162, 167 (1989). General Laws c. 32A, § 8, repeatedly provides that the Commonwealth's percentage contribution is set by appropriation acts. The plain meaning of § 8 is that the percentage of the Commonwealth's contribution to employee health insurance premiums, over the statutory minimum of seventy-five per cent, is set solely by appropriation acts. Thus, the judge's interpretation of this statute as being merely descriptive conflicts with the "common tenet of statutory construction that, wherever possible, no provision of a legislative enactment should be treated as superfluous." Casa Loma, Inc. v. Alcoholic Beverage Control Comm'n, 377 Mass. 231, 234 (1979). In an amicus brief, The Alliance, AFSCME/SEIU, AFL-CIO argues that the judge's interpretation does not render the appropriation provisions superfluous because the provisions remain applicable to all State employees not subject to collective bargaining agreements. The text of the statute does not support such a reading. The statute does not distinguish between employees who have collective bargaining agreements and those who do not. Compare G. L. c. 32B, § 16 (1992 ed.) (providing that collective bargaining agreements can set HMO contribution percentages for certain employees of counties, cities, towns, and districts and their dependents).

Laws c. 32A, § 8, existed at the time the agreements were made; the agreements incorporate its mandate that the appropriation process determines the percentage of the Commonwealth's contribution. [13] Because the agreements themselves necessarily contemplated changes in premium contributions through subsequent appropriation acts, there was no conflict between the line item and the collective bargaining agreements. Thus, there was no impairment of NAGE's contractual rights and therefore no violation of the contract clause.

The judgment of the Superior Court is vacated and the case remanded for entry of a declaration that St. 1993, c. 110, § 2, line item 1108-5200 does not violate the contract clause of the United States Constitution.

So ordered.

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[13] This case is distinguished from Local 589, Amalgamated Transit Union v. Massachusetts Bay Transp. Auth., 414 Mass. 323 (1993). In that case, the statute that raised the employees' contribution to their health insurance premiums was enacted after the collective bargaining agreement was executed. Id. at 324-325. We said that the statute did not apply retroactively to alter the existing agreement. Id. at 329. In the present case, the statute, G. L. c. 32A, § 8, was in force at the time the agreements were negotiated.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 93-5509-E

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, KENNETH T. LYONS, President, and ROBERT FRIEL, GRACE MUCCI, JOHN DONEGAN, PATRICIA BARBARO, KENNETH HOWE and JAMES FARLEY, as they are NAGE Union Presidents representing Units One, Three and Six of the Commonwealth of Massachusetts; and KENNETH H. KNIGHT and DREW REARDON

vs.

COMMONWEALTH OF MASSACHUSETTS; MARK E. ROBINSON, as he is the Secretary of the Executive Office of Administration and Finance, WILLIAM KILMARTIN, as he is Comptroller of the Commonwealth of Massachusetts, the GROUP INSURANCE COMMISSION, DOLORES L. MITCHELL, as she is the Executive Director of the Group Insurance Commission, the BOARD OF REGENTS OF HIGHER EDUCATION and its successor entity, the HIGHER EDUCATION COORDINATING COUNCIL and STANLEY KOPLIC, as he is the Chancellor of the Higher Education Coordinating Council

MEMORANDUM OF DECISION AND ORDER OF JUDGMENT

The plaintiffs, the National Association of Government Employees ("NAGE"), several officials of NAGE and two employees of the Commonwealth (collectively "NAGE"), brought this action against the Commonwealth of Massachusetts ("the Commonwealth"), and several state officials, challenging a statutory provision in the Commonwealth's 1994 fiscal year budget which provides that the Commonwealth's share of the group health insurance premiums for active state employees will be eighty-five percent, and which therefore increases state employees' contributions to their health insurance premiums from ten percent to fifteen percent.

NAGE contends that the increase in the employees' share of health insurance premiums violates the terms of three collective bargaining agreements between NAGE and the Commonwealth. These collective bargaining agreements contain a provision which requires that the Commonwealth pay ninety percent of the monthly premium for the state employees' group health insurance plan and that each employee pay ten percent of that health insurance premium. NAGE seeks a declaratory judgment that the statutory provision which increases the employees' share of health insurance premiums impairs the contractual rights of employees covered by the three collective bargaining agreements, in violation of the Contract Clauses of the Federal and State Constitutions. The parties have submitted this action for determination by the court on a Statement of Agreed Facts.

DISCUSSION

The Commonwealth's responsibility to make any payment towards its employees' monthly health insurance premiums derives from G.L. c. 32A, §§ 8 and 14. General laws chapter 32A, section 8 states in relevant part:

> "the commonwealth, on behalf of active and retired employees and their dependents, shall contribute no less than seventy-five per cent of the total monthly premium or rate applicable to said coverages . . . except that upon approval by way of an annual, or more frequent appropriation act, the commonwealth may contribute more than seventy-five percent but less than the entire total monthly premium or rate. Each appropriation act as may be applicable, shall provide the necessary sum based upon the estimated monthly cost as required by section four and shall describe the ratio of contribution to be paid by the commonwealth and by the active and retired employees insured under the aforesaid sections . . . . The aforesaid ratio shall continue until changed by a subsequent appropriation act and the aforesaid sum shall also include the commonwealth's contribution of the total monthly premium or rate required for coverages contained in other sections of this chapter . . . .

G.L. c. 32A, § 8 also sets forth the Commonwealth's obligations under its indemnity plan and preferred provider organization in accordance with sections 4, 4A, 5, 6, 10B, 10C, and 12 of Chapter 32A. General laws chapter 32A, section 14 governs the Commonwealth's obligations for contracts for services of health care organizations, often referred to as HMO's. Since 1990, the Commonwealth has

been required to contribute the same percentage of the total monthly premiums or rates for the services of HMO's, as it contributes for its other group health insurance. See G.L. c. 32A, §§ 8, 14; Statement of Agreed Facts, p. 4.

The three collective bargaining agreements between NAGE and the Commonwealth contain a contract provision addressing group health insurance contributions which states: "[T]he Commonwealth shall pay ninety (90) percent of the monthly premium rate for the Group Health Insurance Plan and each employee covered shall pay ten (10) percent of this premium rate for the type of coverage that is provided for him/her and his/her dependents under the Plan." Article 13 of each collective bargaining agreement. The duration of the three collective bargaining agreements "shall be for the three year period from July 1, 1990 to June 30, 1993." Article 29 of each collective bargaining agreement. The duration clauses contained in the three collective bargaining agreements also provide that "[s]hould a successor Agreement not be executed by July 1, 1993, this Agreement shall remain in full force and effect until a successor agreement is executed." Id. Plaintiff's Amended Complaint, p. 5-6.

Since June 30, 1993, no new collective bargaining agreements have been executed. NAGE therefore asserts, and this court concludes, that the collective bargaining agreements which require the Commonwealth to pay a ninety percent share of the group health insurance premium are still in effect due to those agreements' duration clauses.

The Commonwealth of Massachusetts' budget for the fiscal year 1994 provides that the Commonwealth's share of the group insurance premium for active state employees shall be eighty-five percent and mandates an increase in the state

employees' share of their health insurance premiums to fifteen percent. [1] St. 1993, c. 110, § 2, Item 1108-5200 ("budget line item"). The budget line item was effective after July 31, 1993 and the contribution of health insurance premiums to be paid for retired employees remained at ninety percent. Id.

In September 1993, the Commonwealth implemented a deduction from government employees' paychecks of fifteen percent of their monthly health insurance premiums. Plaintiffs' Amended Complaint, p.6.

NAGE contends that the employees covered under the three collective bargaining agreements have suffered an impairment of contract because the budget line item, which mandates the percentage of contribution of health insurance premiums paid by the Commonwealth and by state employees, conflicts with the current collective bargaining

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[1] The budget line item provides in relevant part:

> the Commonwealth's share of the group insurance premium for active and retired state employees as provided in section eight of chapter thirty-two A and for the purposes of section fourteen of said chapter thirty-two A shall be ninety percent of the total monthly premiums and rates as established by the commission; provided further, that after July thirty-first, nineteen hundred and ninety-three, the commonwealth's share of such premium for active state employees shall be eighty-five percent of such premiums and rates . . . ."

St. 1993, c. 110, § 2, Item 1108-5200.

agreements. [2] In analyzing a Contract Clause challenge, a three-part test must be applied to determine whether: (1) there has been a substantial impairment of a contract; (2) if the state law has, in fact, operated as a substantial impairment of the contractual relationship, whether it is "based upon a significant and legitimate public purpose such as the remedying of a board and general social or economic problem;" and (3) whether the "adjustment of the rights and responsibilities [of the parties] is based on reasonable conditions and [is] of an appropriate character." Fitchburg Gas and Elec. Light Co. v. Department of Pub. Utils., 395 Mass. 836, 852-53 (1985) (citing Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 410 (1983)); Defendants' Trial Brief, p. 7-8.

First, the court must consider whether there has been a substantial impairment of NAGE's contractual rights. Each of the three collective bargaining agreements contains an appropriation clause which states:

> Appropriation by the General Court
>
> The cost items [3] contained in this Agreement shall not become effective unless appropriations necessary to fully fund such cost items have been enacted by the General Court in accordance with M.G.L. c. 150E, section 7, in which case, the cost items shall be effective on the date provided in the Agreement. The

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[2] U.S. Const. art. I, § 10, cl. 1 states in relevant part: "No state shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."

[3] General laws chapter 150E, section 1 defines "cost items" as "the provisions of a collective bargaining agreement which require an appropriation by a legislative body."

> employer shall make sure request of the General Court. If the General Court rejects the request to fund the Agreement, the cost items shall be returned to the parties for further bargaining.

Article 30 of the collective bargaining agreements. NAGE contends that Article 30 of the contracts is intended to apply only to the first year of the contract, not to each year of the collective bargaining agreements. Plaintiff's Second Memorandum of Law, p.3. NAGE asserts that if funds for the Commonwealth's contribution to state employees' health insurance premiums are appropriated in the first year of the collective bargaining agreement, they validate the entire three year contract. Id.

The Commonwealth, however, asserts that NAGE did not have any legitimate expectations or reliance that their share of monthly health insurance premiums would remain at a ratio of 90/10, since any contractual term in the collective bargaining agreements providing the Commonwealth's share of monthly insurance premiums was subject to appropriation each year, pursuant to G.L. c. 32A, § 8. Defendant's Trial Brief, p. 8-11.

General laws chapter 150E, section 7(b) requires that an employer submit a request to the appropriate legislative body for an appropriation necessary to fund the cost items of a collective bargaining agreement. [4] The "employer" is

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[4] General Laws, chapter 150E, section 7(b) states in relevant part:

> The employer, other than the higher education coordinating council or the board of trustees of the University of Massachusetts, the chief justice for administration and management of the trial court or the state lottery commission, shall submit to the appropriate legislative body within thirty days

"the Commonwealth acting through the commissioner of administration." G.L. c. 150E, § 1; Plaintiff's Third Memorandum of Law, p.1.

In Boston Teachers Union v. School Comm. of Boston, 386 Mass. 197, 204 (1982), the Supreme Judicial Court interpreted G.L. c. 150E, § 7(b) to apply only to funds needed in the first year of the agreement, and determined that an appropriation funding the first year of the contract constituted an approval by the legislative body of the entire agreement. The Court concluded that "in order for § 7(b) to be construed consistently with § 7(a), authorizing contracts of three years duration, the statute must be read as contemplating an initial approval of the contract by the legislative body, followed by appropriations as a matter of course in the succeeding years of the contract." Id. Therefore, the Court held that the city council approved the entire collective bargaining agreement when it appropriated the necessary funds for the first year of the three year agreement, and a "clause . . . that provides for salary increases in the second or third years of the agreement is valid and enforceable, notwithstanding the provisions of St. 1909, c.486. Id. at 208-209." The mayor and the city council were ordered to include in the city's annual budget an appropriation of funds needed to pay the salary increases in the collective bargaining agreement. Id. at 210.

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after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining.

Similarly, this court concludes that when funds were appropriated for the Commonwealth's contribution of ninety percent of the state employees' health insurance premiums in the first year of the NAGE/Commonwealth collective bargaining agreements, it agreed to fund incremental cost items [5] in the subsequent years of those contracts.

General laws chapter 150E, section 7(d) provides that terms of collective bargaining agreements prevail over certain enumerated statues. However, if the statute is not listed in section 7(d), the statute will prevail over contrary terms in the collective bargaining agreement. See Cambridge v. Attorney General, 410 Mass. 165, 173 (1991) (acknowledging statutes listed by G.L. c. 150E, §7(d) are superseded by collective bargaining agreements); Commonwealth v. Labor Relations Comm'n, 404 Mass. 124, 126 (1989) (stating statutes not enumerated in G.L. c. 150E, §7(d) prevail over contrary terms in collective bargaining agreements); National Ass'n of Gov't Employees v. Labor Relations Comm'n, 17 Mass. App. Ct. 542, 544 (1984) (noting if a statute is listed in G.L. c. 150E, §7(d) it cannot be superseded by a bargaining agreement); School Committee of Holyoke v. Duprey, 8 Mass. App. Ct. 58, 64 (1979)

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[5] General laws chapter 150E, § 1 defines "incremental cost items" as:

> [T]he provisions of a collective bargaining agreement that require, in respect of any fiscal year, an appropriation by a legislative body that is greater than the appropriation so required in the preceding fiscal year; provided, however, that in respect of the first fiscal year or portion thereof during which an agreement has effect, "incremental cost items" shall mean the provisions of a collective agreement that require an appropriation by a legislative body of monies that are newly required by the employer to discharge the obligations arising under the terms of such agreement.

(declaring statute not listed in G.L. c. 150E, § 7(d) preempts bargaining agreement provision).

The Group Insurance Commission statute, G.L. c. 32A, § 8, is not one of the listed statutes in G.L. c. 150E, § 7(d) and therefore G.L. c. 32A, § 8 prevails. However, this court also finds that G.L. c. 32A, § 8 is merely a description of the appropriation process, not an essential condition of the contract, and therefore the contract is valid.

A substantial "impairment [of contract] will be upheld if it is reasonable and necessary to serve important public purpose". See Nationwide Mutual Ins. Co. v. Commissioner of Ins., 397 Mass. 416, 423 (1986), citing United States Trust Co. v. New Jersey, 431 U.S. 1, 25 (1977). The Commonwealth asserts that the alleged impairment of contract here is justified by a legitimate public purpose in reducing health care costs to the Commonwealth. Defendant's Trial Brief, p. 18. The total savings generated for the Commonwealth by the budget line item for fiscal year 1994 requiring an additional five percent from all state employees is in excess of $14,000,000. Statement of Agreed Facts, p. 7. Although the goal of controlling health care costs may be well intentioned, the state employees covered under the NAGE/Commonwealth collective bargaining agreements should not bear the burden of the Commonwealth's fiscal difficulties. See, e.g., Massachusetts Community College Council, et al. v. William Weld, et al., Suffolk Sup. Ct. No. 91-2522 (H. Zobel, J.) (Feb. 16, 1994) where the Superior Court concluded that "the employer's subsequent economic problems bear not at all on the obligation to pay for labor nor, for that matter, on any other term in the employment contract."

The third prong of the Contract Clause analysis requires the court to determine "whether the adjustment of the 'rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 412 (1983), quoting United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977). The increase in state employees' contributions is estimated to amount to an additional $13/month for those covered by an indemnity plan, $9/month for those covered by an HMO, and $11/month for those covered by a preferred provider organization. Statement of Agreed Facts, p. 7.

In Massachusetts Community College Council, et al. v. William Weld, et al., Suffolk Sup. Ct. No. 91-2522 (H. Zobel, J.) (Feb. 16, 1994), the Superior Court held that a mandatory employee furlough program violated a collective bargaining agreement and stated, "[f]inding the funds to meet its contractual obligations was entirely and exclusively the employer's problem, which it could not shift onto the employees by unilaterally withholding bargaining-for pay." Similarly, this court finds that the budget line item in this case, which requires state employees to make an additional contribution to their future health care premiums in order to control health care costs, is not a reasonable measure. Accordingly, the statutory provision in the Commonwealth's 1994 fiscal year budget which increases the state employees' share of their health insurance coverage during the term of the present collective bargaining agreements, and any extensions thereof, is invalid.

ORDER

For the foregoing reasons, it is hereby **DECLARED, ADJUDGED,** and **DECREED** that the provision in the Commonwealth's 1994 fiscal year budget increasing the health insurance premiums from ten percent to fifteen percent for those employees covered by the three NAGE/Commonwealth collective bargaining agreements is unconstitutional as an impairment of the obligation of contract, and therefore null and void, and judgment shall enter for the plaintiffs in this action.

_____

Peter M. Lauriat
Justice of the Superior Court

DATED: April 12, 1994

(2)

Supreme Court, U.S.
FILED
JUN 7 1995
OFFICE OF THE CLERK

No. 94-1836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ET AL.,
Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH'S BRIEF IN OPPOSITION

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Question Presented

1. Whether an appropriations act changing the Commonwealth of Massachusetts' contribution toward its employees' health insurance premiums violated the Contracts Clause where a provision of the general laws, enacted prior to any of the contracts at issue, specified that the Commonwealth's contributions for insurance premiums would be established and changed in appropriations acts.

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No. 94-1836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ET AL.,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH'S BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15, the respondents Commonwealth of Massachusetts, Secretary of the Executive Office of Administration and Finance, Comptroller of the Commonwealth of Massachusetts, Group Insurance Commission, Board of Regents of Higher Education, and Higher Education Coordinating Council (collectively,

"Commonwealth") submit this brief in opposition to the petition for writ of certiorari ("Pet.").

Decisions Below

The opinion of the Massachusetts Supreme Judicial Court, reproduced at pages A-1-A-9 of the appendix to the petition ("Pet. App."), is reported at 419 Mass. 448, 646 N.E.2d 106 (1995). The earlier decision of the Massachusetts Superior Court is unreported, and it is included in the Appendix to the Petition at pages A-10-A-21.

Jurisdiction

The opinion of the Supreme Judicial Court was entered February 9, 1995. See Pet. App. A-1. The petition was filed May 8, 1995, and was received by the Commonwealth on May 10, 1995. The petitioners invoke the Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

Relevant Constitutional and Statutory Provisions

The recitation of pertinent constitutional and statutory provisions set forth at pages 2-3 of the petition is accurate, and the Commonwealth accepts it with two additions.

First, the paragraph in Mass. G.L. c. 32A, § 8 that immediately follows the paragraph quoted by petitioners provides in pertinent part:

> With respect to any period of insurance authorized by this chapter which is in effect for an active employee and dependent, there shall

> be withheld from each payment of salary or wages no more than twenty-five percent of the aforesaid total monthly premium or rate, or, there shall be a lesser amount as provided in the most recent applicable appropriation act. . . .

Second, Mass. G.L. c. 150E, § 7(d), provides in pertinent part that:

> If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to [Mass. G.L. c. 150E, § 6] and . . . any of the following statutory provisions or rules or regulations made thereunder: [list of statutes omitted], the terms of the collective bargaining agreement shall prevail.

The list of statutes in § 7(d) does not include Mass. G.L. c. 32A, § 8.

Statement of the Case

This case arises from a line item in a Massachusetts appropriations act, Mass. St. 1993, c. 110, § 2, item 1108-5200, that changed the Commonwealth's share of public employee health insurance premiums from ninety to eighty-five percent. The appropriations act was enacted in accordance with a section of the Massachusetts general laws that pre-dated the collective bargaining agreements and provided that the Commonwealth's contribution toward employee insurance premiums would be determined in appropriations acts, Mass. G.L. c. 32A, § 8. An accurate statement of the case appears at pages A-1-A-6 (opinion of the Massachusetts Supreme

Judicial Court) of the appendix to the petition.

In brief, the case rests on four facts. *First*, the Massachusetts Legislature has provided by general law since before 1974 that the Commonwealth will pay no less than seventy-five percent of employee insurance premiums. The law further provides that the Commonwealth could contribute a greater percentage "upon approval by way of an annual, or more frequent appropriation act," and that the percentage so set would continue "until changed by a subsequent appropriations act . . . ." Mass. G.L. c. 32A, § 8 (as amended by Mass. St. 1974, c. 794, § 1).[1]

Second, consistent with this provision, the respective contribution percentages of the Commonwealth and its employees have in fact varied over the years, as directed by periodic appropriations acts.[2] Indeed, when the Group

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[1] Similarly, the second paragraph of § 8 specifies that "there shall be withheld from each payment of salary or wages no more than twenty-five percent of the aforesaid total monthly premium or rate, or, there shall be a lesser amount *as provided in the most recent applicable appropriation act.*" Mass. G.L. c. 32A, § 8 (emphasis supplied). Further underscoring the principal role of the appropriations process, the 1974 session law that enacted the present statutory language provides in its transition section that "[t]he seventy-five per cent contribution by the Commonwealth and the twenty-five percent contribution by . . . employees as provided in [c. 32A] prior to the passage of this act shall remain in effect *until an appropriation act changes this ratio* after which the provisions of [§ 8 as amended] shall prevail." Mass. St. 1974, c. 794, § 4 (emphasis supplied).

[2] Throughout the mid-1970's, the Commonwealth contributed the statutory minimum of seventy-five percent. In June 1977, the Legislature increased the Commonwealth's share to eighty

Insurance Commission underwithheld state employees' premiums in 1977 in anticipation of a line item that ultimately did not become law because of a gubernatorial veto, the Commission recouped the underwithholding, even though the then-current collective bargaining agreements contained the vetoed line item's lower employee contribution percentage. *See Group Insurance Commission v. Labor Relations Comm'n*, 381 Mass. 199, 200-201, 408 N.E.2d 851 (1980).

Third, in 1990, petitioner NAGE entered into certain collective bargaining agreements with the Commonwealth (acting through its Office of Employee Relations) that provided that the Commonwealth would contribute ninety percent of the employee insurance premiums, a percentage that represented the level of contributions set forth in the most recent appropriations acts. Although the contracts had a three year term, they remain in effect under open-ended "duration" clauses.

Fourth, in 1993, the Massachusetts Legislature enacted an appropriations act that changed the Commonweath's contribution level to eighty-five percent. Mass. St. 1993, c.

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percent retroactive to January 1, 1977, but only for the six month period until June 30, 1977. Mass. St. 1977, c. 300, § 2, line item 1120-2000. The contribution then reverted to seventy-five percent. *Id.* A year later, the Legislature increased the Commonwealth's share to eighty percent retroactive to July 1, 1977; to eighty-five percent retroactive to January 1, 1978; and to ninety percent effective January 1, 1979. Mass. St. 1978, c. 367, § 2, line item 1120-2000. Subsequent appropriation acts maintained the 90/10 ratio until fiscal 1994, the fiscal year at issue here.

110, § 2, item 1108-5200.

REASONS FOR DENYING THE WRIT

"A review on writ of certiorari is not a matter of right but of judicial discretion." Rules of the United States Supreme Court, Rule 10.1. Such a writ is to be granted "only when there are special and important reasons therefor." *Id.* The purpose of certiorari jurisdiction is to permit the Court to select cases of "such gravity and general importance" as to warrant plenary review. *In re Woods*, 143 U.S. 202, 206 (1892).

For the reasons set forth below, the petition does not satisfy the traditional criteria which guide the Court's discretionary review, and it should be denied.

I. THE SUPREME JUDICIAL COURT'S HOLDING THAT THERE WAS NO IMPAIRMENT OF CONTRACT DOES NOT WARRANT REVIEW.

Petitioners repeatedly assert that the Commonwealth has "abrogated" its collective bargaining agreements with NAGE's members. However, the Supreme Judicial Court unanimously held that there was no impairment because the parties negotiating the contracts "did not have the power to bind the Commonwealth to a contribution ratio which could not be altered by the Legislature." Pet. App. A-8. Instead, "[t]he power reserved for the Legislature under [Mass. G.L. c. 32,] § 8 to alter the ratio became an implied term that was incorporated into the contracts." *Id.* at A-7. This unexceptional ruling on a matter initially of state law presents no broad issue of national importance deserving of review.

The threshhold question in Contracts Clause analysis is

whether a change in state law has "operated as a substantial impairment of a contractual relationship." *General Motors v. Romein*, 503 U.S. 181, 186 (1992)(quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). "This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that relationship, and whether the impairment is substantial." *Id.* Although the question whether a contract was made for Contract Clause purposes is ultimately one of federal law, the Court "accords respectful consideration and great weight to the views of the State's highest court." *Id.* at 187 (quoting *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938)). Indeed, this Court has held that reversal would be proper only if the State decision were "manifestly wrong," *Hale v. Iowa State Board of Assessment and Review*, 302 U.S. 95, 101 (1937), and only if the relevant statute "could not have expressed the meaning thus attributed to it" by the State court, *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168, 171 (1947).

The decision below should be accorded great weight because the Supreme Judicial Court reasonably interpreted the state statutes. *See* Pet. App. A.6.-A.8. Massachusetts has specifically addressed the relationship between statutes and collective bargaining agreements in Mass. G.L. c. 150E, § 7(d), which lists statutes that are subordinated to collective bargaining agreements. *Id.* It was well established, before the contracts at issue were entered into, that "statutes not specifically enumerated in § 7(d) will prevail over contrary collective bargaining agreements." *Commonwealth v. Labor Relations Comm'n*, 404 Mass. 124, 126, 533 N.E.2d 1326 (1989). *Accord Burlington v. Labor Relations Comm'n*, 390

Mass. 157, 163, 454 N.E.2d 465 (1983).[3]

The list of statutes that can be superceded by collective bargaining does not include either Mass. G.L. c. 32A, § 8, the statute concerning the Commonwealth's contributions toward insurance premiums, or any other section of c. 32A. Mass. G.L. c. 150E, § 7(d). The Supreme Judicial Court accordingly held that the provision of Mass. G.L. c. 32A, § 8, that mandates the Commonwealth's contribution to employees' insurance premiums be set and be changed in appropriations acts constituted an express "reserved power of the Legislature to reduce the percentage of the Commonwealth's contribution in appropriation acts." Pet. App. at A-6-A-7. It further held that, under well established principles of state law, the Legislature's reserved power to alter the contributions previously set by the Legislature became an implied term of the

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[3] Petitioners suggest that the decision below reflects a change from the Supreme Judicial Court's state law holding in *Boston Teachers Union, Local 66 v. School Committee of Boston*, 386 Mass. 197, 207-209, 434 N.E.2d 1258 (1982). Pet. at 6, 15. However, as the Supreme Judicial Court noted, Pet. App. A-7 n.11, that case addressed the issue whether a municipal collective bargaining agreement funded for the first year is enforceable in its later years, not whether a contractual obligation existed *ab initio*. Section 8 is thus not, as petitioners assert, simply a "state law[] making all expenditures contingent on appropriations." Pet. at 6. It instead reserves to the Legislature the right to set the contribution percentage in the first instance. As the Supreme Judicial Court stressed, "[t]he plain meaning of § 8 is that the percentage of the Commonwealth's contribution . . . is set solely by appropriation acts." Pet. App. A-8 n.12. This uniquely structured state statutory scheme hardly raises the broad national implications that petitioners ascribe to it.

contracts. *Id.* at A-7. *See, e.g., Feakes v. Bozyczko*, 373 Mass. 633, 636, 369 N.E.2d 978 (1977).[4]

The Supreme Judicial Court properly applied its holding in the Contracts Clause context. This Court has held that "state laws are implied into private contracts . . . when those laws affect the validity, construction, and enforcement of contracts." *General Motors v. Romein*, 503 U.S. at 189. *See also United States Trust Co. v. New Jersey*, 431 U.S. 1, 19-20 n.17 (1977) ("the laws which subsist at the time and place of the making of a contract . . . enter into and form part of it, as if they were expressly referred to or incorporated in its terms")(quoting *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934)). Section 8 clearly concerns the validity of the contract insofar as it addresses the Commonwealth's contributions toward insurance premiums.

In sum, the decision below rests on long established principles of state law. The application of these principles to the peculiar statutes at issue presents no questions warranting review by this Court.

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[4] The petitioners refer to the Supreme Judicial Court's interpretation of § 8 as a "fiction" because, in their view, the statute merely describes the appropriation process. Pet. at 11-12. There would be no purpose to such a descriptive statute, however, and the Supreme Judicial Court rejected this reading under the long established principle that "wherever possible, no provision of a legislative enactment should be treated as superfluous." Pet. App. at A-8 n. 12 (quoting *Casa Loma, Inc. v. Alcoholic Beverages Control Comm'n*, 377 Mass. 231, 234, 385 N.E.2d 976 (1979)).

II. THE HOLDING OF NO IMPAIRMENT IS CONSISTENT WITH DECISIONS OF THIS COURT.

The petitioners contend that the Supreme Judicial Court's holding is contrary to this Court's decisions. However, in asserting that the Supreme Judicial Court "manipulat[ed]" the concept of reserved power, Pet. at 11, petitioners ignore the fact that the cases on which they rely generally addressed implied reservations of general police powers, not express statutes addressing the specific benefit at issue and reserving that benefit to the legislative domain in the first instance.

For example, petitioners assert that the Supreme Judicial Court used reasoning rejected in *United States Trust Co. v. New Jersey*. Pet. at 12. However, the Court there discussed only whether a State impliedly reserved the right to alter a contract under its general powers. 431 U.S. at 23-24. As in *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. at 435-44, the Court was only concerned with the scope of the State's "protective power," and it did not consider the effect of any express statutory reservation.

Petitioners do refer to two cases where the courts rejected claims that legislative provisions effectively reserved the power to alter a contract. However, the purported reservations were nowhere near as specific as Mass. G.L. c. 31A, § 8. More importantly, here the Supreme Judicial Court did *not* hold that § 8 constitutes a reserved power to alter a collective bargaining agreement. It instead held that the statute reserved to the Legislature the right to set the contribution in the first instance, and that that reservation became an implied term of the

contract. Pet. App. A-7, A-8 n.12, A-9.[5] The holding accordingly does not conflict with the cited cases.

Specifically, in *Owensboro v. Cumberland Telephone & Telegraph Co.*, 230 U.S. 58 (1913), the Court merely determined that a *general* power of repeal did not reserve the right to alter contractual rights. *Id.* at 72-74. Indeed, the Court took pains to distinguish *Greenwood v. Union Freight R. Co.*, 105 U.S. 13 (1881), on the ground that that case involved an "unmistakable" reservation of the right of repeal in the "general law of the State." *Id.* at 73. The lower court decision cited by the petitioners also addressed legislation far different from that at issue here. The majority in *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012 (4th Cir, 1993), *cert. denied*, 114 S. Ct. 1127 (1994), held only that a section of the City Charter authorizing the Board of estimates to effect "reductions . . . in appropriations" in case of a revenue deficiency did not clearly evidence an intent to authorize modification of contracts. *Id.* at 1016.[6]

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[5] Section 8 thus does not reserve legislative power to alter the *contract*; it reserves legislative power to alter the percentage previously set by the Legislature. In Massachusetts, as the Supreme Judicial Court emphasized, "the Commonwealth's contribution . . . is set solely by appropriation acts." Pet. App. at A-8 n.12.

[6] There was no issue of legislatively reserved power in *Carlstrom v. State*, 103 Wash.2d 391, 694 P.2d 1 (Wash. 1985), cited by petitioners. The Washington Supreme Court only held that a provision in the contract subjecting it to all present and

By contrast, the provisions of Mass. G.L. c. 32A, § 8, constitute an express reservation of legislative authority of the type contemplated by the Court in *Owensboro* and found in *Greenwood*. See also, *e.g.*, *Public Service Commission of Puerto Rico v. Havemeyer*, 296 U.S. 506, 517 (1936) ("The reserved power to repeal a grant of special privileges implies that it may be exerted at the pleasure of the legislature or other authority in which the power to repeal is vested."). Section 8 provides that the Commonwealth's contribution, if greater than 75%, shall be approved by "annual or more frequent" appropriations act and shall continue at the level set in such an act only until changed by a subsequent act. There is no ambiguity in the statute; the Legislature reserved to itself the power to set the Commonwealth's contributions, to be exercised in annual or more frequent appropriations acts. Since § 8 was in effect before the contracts were entered, the Contracts Clause is not implicated. *See Watson v. Employees Liability Assur. Corp.*, 348 U.S. 66, 70 (1954) (impairment claim is "wholly devoid of merit" where challenged statute "became effective before the insurance contract was made").

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future acts of the legislature did not make the salary schedule contingent upon appropriation where other contracts expressly made the schedule subject to that contingency. *Id.* at 4.

III. PETITIONERS' REMAINING CLAIMS OF CONFLICT FOCUS ON ISSUES NOT REACHED BELOW.

Petitioners assert the existence of conflicts among lower courts on two additional grounds. However, a conflict in the lower courts will not justify review unless it is "real and embarassing." *Rice v. Sioux City Cemetary*, 349 U.S. 70, 79 (1955)(quoting *Layne F. Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)). The asserted conflicts are neither real nor embarassing because they concern issues that the Supreme Judicial Court did not reach.

Petitioners first claim that the decision below is "contrary to" rulings of other courts holding that reduced benefits to employees under collective bargaining agreements constitute "substantial" impairments of contracts. Pet. at 9. They also assert that the "result" in the Supreme Judicial Court runs counter to the "recognition" by a majority of state and federal courts that a State's need for fiscal austerity cannot justify a substantial impairment of contract. Pet. at 16. The Supreme Judicial Court properly did not address these issues. It instead held only that the appropriations act challenged here did not impair any obligation of contract because a pre-existing general law had reserved the determination of the Commonwealth's premium contribution to the Legislature. Pet. App. A-6. It thus did not need to reach the questions of whether an impairment of a collective bargaining agreement is substantial and, if so, whether it can be justified.

With the exception of the cases discussed in Section II above, the decisions on which petitioners rely (1) involved post-contract legislation that cut back on what the courts

determined were contractual benefits and (2) accordingly considered whether the resulting impairment was substantial and justified by fiscal pressures. *Condell v. Bess*, 983 F.2d 415 (2d Cir.), *cert. denied*, 113 S. Ct. 1849 (1993); *Association of Surrogates v. New York*, 940 F.2d 766 (2d Cir. 1991), *cert. denied*, 502 U.S. 1058 (1992); *Opinion of the Justices (Furlough)*, 135 N.H. 625, 609 A.2d 1204 (1992); *Nevada Employees Ass'n v. Keating*, 903 F.2d 1223 (9th Cir.), *cert. denied*, 498 U.S. 999 (1990); *Association of Surrogates v. New York*, 79 N.Y.2d 39, 588 N.E.2d 51 (1992); *Sonoma County Org. of Public Employees v. County of Sonoma*, 23 Cal.3d 296, 591 P.2d 1 (1979). Since the Supreme Judicial Court did not address the substantiality and justification issues, there is no conflict between its decision and the cited cases.[7] In short, even if one were to assume for the sake of argument that there was no justification for a hypothesized substantial impairment of contract on the facts of this case, that does not warrant review of the Supreme Judicial Court's decision holding that there was no impairment under the peculiar Massachusetts statutory scheme.

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[7] Indeed, the Supreme Judicial Court did reach similar issues in another case, and it appears to agree that reasonably foreseeable fiscal constraints do not justify a substantial impairment of contract. See *Massachusetts Community College Council v. Commonwealth of Massachusetts*, 420 Mass. 126, — N.E. 2d — (1995).

Conclusion

For the reasons stated above, the petition for a writ of certiorari should be denied.

COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE, COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS, GROUP INSURANCE COMMISSION, BOARD OF REGENTS OF HIGHER EDUCATION, HIGHER EDUCATION COORDINATING COUNCIL,

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Supreme Court, U.S.
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(3)

No. 94-1836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, KENNETH T. LYONS, ROBERT FRIEHL, GRACE MUCCI, JOHN DONEGAN, PATRICIA BARBARO, KENNETH HOWE, JAMES FARLEY, KENNETH H. KNIGHT, AND DREW REARDON,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE, COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS, GROUP INSURANCE COMMISSION, BOARD OF REGENTS OF HIGHER EDUCATION, HIGHER EDUCATION COORDINATING COUNCIL,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts

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PETITIONERS' REPLY BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

No. 94-1836

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, et al.,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, et al.,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Judicial Court of
Massachusetts

PETITIONERS' REPLY BRIEF

ARGUMENT

In their Brief in Opposition, respondents effectively concede that, if the requirement that the Commonwealth fund 90% of its employees' health benefits was an enforceable term of the collective bargaining agreements, a decision upholding the abrogation of that term against a Contract

Clause challenge would be contrary to the weight of authority in other state courts, in the federal courts of appeals, and, indeed, in the Supreme Judicial Court of Massachusetts itself. *See* Br. in Opp. at 13-14 & n.7. Thus, respondents rest their opposition on the argument that this Court should defer to the Supreme Judicial Court's determination that the state had reserved to the legislature the authority to alter the level of its health benefit contribution at will, despite the clear terms of the collective bargaining agreements. Respondents' arguments ignore compelling indications that no such power was reserved, and gloss over the conflict between the Supreme Judicial Court's reserved power analysis and that of other courts.

1. Respondents Exaggerate the Deference Due the Decision Below.

Respondents' suggestion that the Court defer to the Supreme Judicial Court's resolution of the reserved power issue overlooks this Court's repeated insistence on its own obligation of independent review of such issues in Contract Clause litigation arising in the state courts. As the Court pointed out in its most recent discussion of this question, "ultimately we are 'bound to decide for ourselves whether a contract was made,'" as the issue is a federal question. *General Motors Corp. v. Romein*, 503 U.S. 181, 187 (1992) (quoting *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938), and citing *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942)).

Romein follows a long line of decisions by this Court emphasizing that, in Contract Clause cases, "this court will give careful and respectful consideration and all due weight to the adjudication of the state court, *but will determine independently thereof* whether there be a contract, the

obligation of which is within the protection of the contract clause, and whether that obligation has been impaired; and, likewise, *will determine for itself* the meaning and application of state constitutional or statutory provisions said to create the contract or by which it is asserted an impairment has been effected." *Coombes v. Getz*, 285 U.S. 434, 441 (1932) (emphasis added). As Chief Justice Taft observed, "we cannot perform our duty to enforce the guaranty of the federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration." *Appleby v. City of New York*, 271 U.S. 364, 380 (1926). Thus, the Court "must . . . not accept the present conclusion of the state court without inquiry." *Id.*; *accord*, *Larson v. South Dakota*, 278 U.S. 429, 433 (1929).

The authorities cited by the respondents are not to the contrary. In each, this Court undertook a careful, independent review of the existence and terms of the contract, and either accepted or rejected the state court's determination based on its own analysis of the issue. [1] Such a review, under the circumstances here, reveals that the Supreme Judicial Court's reserved power analysis is, indeed,

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[1] For example, in *Hale v. State Board of Assessment and Review*, 302 U.S. 95 (1937), this Court examined at length the question whether the appellants had a contractual exemption from income taxes imposed by the state, and based its agreement with the state court that the contract did not provide such an exemption not only on a searching examination of precedent, but also on the maxim that exemptions from taxation are to be narrowly construed — a principle obviously inapplicable here. *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168 (1947), turned on the same points. Neither mandates uncritical acceptance of a state court's conclusions as to the existence or terms of a contract in a case raising a Contract Clause claim.

"manifestly wrong." *Hale v. State Board of Assessment and Review*, 302 U.S. 95, 101 (1937).

2. Respondents' Reserved Power Analysis Is Flawed.

Respondents' contention that the legislature had reserved the authority to alter the collective bargaining agreements' provisions regarding the amount of health insurance contributions is not based on legislation that clearly and unmistakably reserves that right. Rather, respondents rely on a statute that says only that the amount of such contributions is to be specified in annual appropriations legislation. Respondents further assert that because this statute is not mentioned in Mass. Gen. L. ch. 150E, § 7(d), which lists statutes that are "subordinated" to collective bargaining agreements, the statute, and not the collective bargaining agreement, must prevail in the event of a conflict. Br. in Opp. at 7-8. [2]

What respondents, and the court below, overlook is that there is *clearly no conflict* between the collective bargaining agreements and the statute, and thus no issue as to which must "prevail." A conflict would, of course, be presented if the collective bargaining agreements purported

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[2] Mass. Gen. L. ch. 150E, §7 (d) provides, in pertinent part, that "[i]f a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and . . . any of the following [listed] statutory provisions . . . , the terms of the collective bargaining agreement shall prevail." As respondents note, the Supreme Judicial Court has held that where there is a conflict between a collective bargaining agreement and the terms of a statute *not* listed in § 7(d), the statute will prevail. *Commonwealth v. Labor Relations Comm'n*, 404 Mass. 124, 126, 533 N.E.2d 1326, 1328 (1989).

to require that the state pay 100% of the employees' health insurance costs, or that it pay less than 75%, as such an agreement would be directly contrary to the terms of the statute. Similarly, there would be a conflict between the statute and the agreements (and a clear reservation of legislative authority) if the statute said that the legislature could specify the amount of the contribution irrespective of any collective bargaining agreement.

But the statute says no such thing. It says only that the amount of the contribution is to be specified in annual or more frequent appropriations acts. There is no conflict between this *procedural* requirement and the collective bargaining agreements' *substantive* provisions specifying what the amount must be. The collective bargaining agreement, which the legislature itself ratified, simply obligates the legislature to appropriate in accordance with its terms (or to pay damages for breaching the contract).

Contrary to respondents' suggestion, this was *precisely* the holding of the Supreme Judicial Court in *Boston Teachers Union, Local 66 v. School Comm. of Boston*, 386 Mass. 197, 434 N.E.2d 1258 (1982). In that case, as in this, the governmental entity asserted that a collective bargaining agreement provision purporting to bind it to make certain expenditures was not, and indeed could not be, binding on it because of a statutory provision stating that expenditures could be made only pursuant to appropriations legislation. Even though this statute was *not* included in the list of those "subordinated" to collective bargaining agreements, the Supreme Judicial Court enforced the agreement, finding no conflict between its terms and the requirement that expenditures be established in appropriations legislation. Indeed, the court held that the collective bargaining agreement, once it is ratified,

"mandates the appropriation" by the legislative body of the required amounts as long as the agreement is in force. *Id.* at 210, 434 N.E.2d at 1266. [3]

The Supreme Judicial Court applied the same principle in *School Comm. of Medford v. Labor Relations Comm'n*, 380 Mass. 932, 933, 401 N.E.2d 847, 848 (1980), in which it recognized that health insurance contributions were a mandatory subject of collective bargaining, "and that the existence of the statutory scheme for group insurance embodied in G.L. c. 32B, §§ 7 and 7A, does not exempt the school committee from bargaining over the topic, *despite the fact that an agreement to increase the employer's share of premiums may require subsequent legislative action by the city of Medford"*(emphasis added).

Similarly, in *Commonwealth v. Labor Relations Comm'n*, 404 Mass. 124, 127, 533 N.E.2d 1326, 1328-29 (1989), the Supreme Judicial Court addressed the contention that a statute providing that the salaries of certain personnel were to be determined annually by the Commissioner of Insurance precluded collective bargaining over the amount of the salaries. The court held that the statute did not reserve the issue to the Commissioner, noting explicitly that "[t]here is no inconsistency between [the statute's] provision that salaries be determined by the Commissioner of Administration, and the requirement that, before doing so, the Commissioner must bargain to resolution or impasse."

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[3] Respondents' assertion that Boston Teachers did not address "whether a contractual obligation existed *ab initio*," Br. in Opp. at 8, n.3, overlooks that the court in that case considered and rejected the contention that the statute in question "precludes the city from entering into any contract for the future payment of monies in excess of appropriations." 386 Mass. at 207, 434 N.E.2d at 1264.

By the same token, in *Anderson v. Board of Selectment of Wrentham*, 406 Mass. 508, 548 N.E.2d 1230 (1989), the Supreme Judicial Court rejected the contention that a statute providing that the level of health benefit contributions for municipal employees be "determined by the governmental unit" precluded that determination from being the subject of a collective bargaining agreement. Again, the court found no inconsistency between the general procedural proposition that a level of expenditure be established by some governmental body and the proposition that that body's determination may be governed by a collective bargaining agreement it has entered into.

Moreover, the notion that the legislature is free to enact appropriations legislation specifying a level of health insurance contributions different from that established in a collective bargaining agreement the legislature freely ratified renders illusory the requirement — reiterated by the Supreme Judicial Court in the opinion below — that the state must bargain with its employees over the amount of insurance contributions. As the Supreme Judicial Court recognized in *Anderson*, *supra*, "[s]uch a practice would render the bargaining process an empty formality. 'We do not attribute to the Legislature an intention to pass a largely ineffective collective bargaining statute . . . .'" *Id.* at 512, n.8, 548 N.E.2d at 1233, n.8 (quoting *School Comm. of Newton v. Labor Relations Comm'n*, 388 Mass. 557, 566, 447 N.E.2d 1201, 1208 (1983)).

3. The Supreme Judicial Court's Reserved Power Holding Conflicts with Rulings of Other Courts.

The reliance of respondents and the court below on reserved power as an excuse for disregard of the collective

bargaining agreement thus finds no support either in the terms of the statute supposedly embodying the reservation or in the prior rulings of the court. More significantly for this Court's determination whether to exercise its discretion with respect to the granting of a writ of certiorari in this case, the Supreme Judicial Court's willingness to infer reserved power on such a slender basis is plainly contrary both to the decisions of this Court and to recent decisions of another state supreme court and a federal court of appeals.

With respect to this Court, respondents acknowledge that this Court's cases relying on reserved power have turned on the existence of an "unmistakable" reservation of rights. Br. in Opp., at 11 (citing *Greenwood v. Union Freight R. Co.*, 105 U.S. 13 (1881)). The statute relied on here, by contrast, in no way unmistakably reserves any right to alter lawful levels of contribution set in collective bargaining agreements.

As for conflicting authority in the lower courts, respondents' contention that the opinion below is not in conflict with the decision in *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012 (4th Cir. 1993), blinks reality. There, the Fourth Circuit held that a law specifically authorizing a governmental body to reduce appropriations did *not* reserve authority to reduce expenditures required by collective bargaining agreements. Respondents contend that this reservation was "nowhere near as specific" as that in this case, but provide no explanation. Br. in Opp. at 10. In fact, it is evident that the Massachusetts statute, which says nothing about any authority to reduce expenditures required by collective bargaining agreements, is *less* specific than the statute in *Baltimore Teachers*. Under the clear statement principle followed by the Fourth Circuit in *Baltimore Teachers*, the

purported reservation of authority in this case would not pass muster.

Moreover, respondents' contention that *Carlstrom v. State*, 103 Wash. 2d 391, 694 P.2d 1 (1985), presented "no issue of legislatively reserved power," Br. in Opp. at 11, n.6, is simply unfathomable. In that case, although the contract on its face provided that it would not bind "future actions of the legislature," the court rejected the contention that the legislature had reserved authority to modify material terms of the agreement. Once again, the purported reservation was *at least* as specific as that here, but it failed the clear statement test imposed by the Washington Supreme Court.

The doctrine of reserved power thus provides no basis for upholding the abrogation of the collective bargaining agreements at issue, and the conflict between the ruling below and the decisions of other courts refusing to find such a reservation absent a far more express and unmistakable reservation of power presents an issue worthy of this Court's resolution.

CONCLUSION

For the foregoing reasons, as well as those previously set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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